

Office - Supreme Court, U.S.  
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IN THE  
**Supreme Court of the United States**

October Term, 1937.

**No. 117.**

**DORA STEWART LEWIS, MARY WASHINGTON  
STEWART BORIE and PAULA BROWNING  
DENCKLA,**

*Petitioners,*

**ELIZABETH DONNER HANSON, as Executrix and Trustee  
under the Last Will of Dora Browning Donner, Deceased, et al.,**

*Respondents.*

**On Writ of Certiorari to the Supreme Court of the State  
of Delaware.**

**BRIEF FOR THE RESPONDENT ROBERT B. WALLS,  
JR., Guardian ad Litem for Dorothy B. R. Stewart  
and William Donner Denckla.**

**ROBERT B. WALLS, JR.,**  
500 Industrial Trust Bldg.,  
Wilmington, Delaware,  
*Guardian ad Litem for Dorothy  
B. R. Stewart and William  
Donner Denckla.*

IN THE  
Supreme Court of the United States.

OCTOBER TERM, 1957.

No. 117.

DORA STEWART LEWIS, MARY WASHINGTON STEWART BORIE  
and PAULA BROWNING DENCKLA,  
*Petitioners,*

v.

ELIZABETH DONNER HANSON, as Executrix and Trustee  
Under the Last Will of Dora Browning Donner, De-  
ceased,

WILMINGTON TRUST COMPANY, a Delaware Corporation, as  
Trustee Under Three Separate Agreements, (1) and  
(2) With William H. Donner Dated March 18, 1932 and  
March 19, 1932, and (3) With Dora Browning Donner  
Dated March 25, 1935,

DELAWARE TRUST COMPANY, a Delaware Corporation, as  
Trustee Under Three Separate Agreements, (1) With  
William H. Donner Dated August 6, 1940, and (2) and  
(3) With Elizabeth Donner Hanson, Both Dated No-  
vember 26, 1948,

KATHERINE N. R. DENCKLA,

ROBERT B. WALLS, JR., ESQUIRE, Guardian ad Litem for  
Dorothy B. R. Stewart and William Donner Denckla,  
ELWYN L. MIDDLETON, Guardian of the Property of Dorothy  
B. R. Stewart, a Mentally Ill Person,

EDWIN D. STEEL, JR., ESQUIRE, Guardian ad Litem for  
Joseph Donner Winsor, Curtin Winsor, Jr., and Don-  
ner Hanson,

BRYN MAWR HOSPITAL, a Pennsylvania Corporation, MIRIAM  
V. MOYER, JAMES SMITH, WALTER HAMILTON, DOROTHY  
A. DOYLE, RUTH BRENNER and MARY GLACKENS,

LOUISVILLE TRUST COMPANY, a Kentucky Corporation, as  
Trustee for Benedict H. Hanson, and as Trustee Under  
Agreements With William H. Donner,

WILLIAM DONNER ROOSEVELT, JOHN STEWART and  
BENEDICT H. HANSON,

*Respondents.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF DELAWARE

**BRIEF FOR THE RESPONDENT ROBERT B. WALLS,  
JR., GUARDIAN AD LITEM FOR DOROTHY B. R.  
STEWART AND WILLIAM DONNER DENCKLA.**

**ARGUMENT.**

**1. The Supreme Court of the State of Delaware Erred When  
It Refused to Accord Full Faith and Credit to the Judg-  
ment of the Supreme Court of the State of Florida.**

This respondent adopts the statement of the case and argument in the brief of the Petitioners.

Only a short additional argument will be made. The Delaware Court, in holding that the Florida Court did not have jurisdiction over the Wilmington Trust Company, the trustee, and Delaware Trust Company, a beneficiary, relied heavily on *Pennoyer v. Neff*, 95 U. S. 714, but failed to take into consideration the modifications on the rules set forth therein by later decisions of this Court. A late modification is found in *McGee v. International Life Insurance Company*, 26 L. W. 4073 (U. S. Supreme Ct., Dec. 16, 1957), a case involving the liability of the insurance company, a Texas corporation, for payment of a death claim under a life insurance policy. The insured was a resident of California, and the beneficiary was also a resident of California. The business transactions prior to the death of the insured had been carried on by mail. Upon the death of the insured, the insurance company refused to pay the death claim. The beneficiary thereupon brought suit in California and service was had on the insurance company by registered mail at its principal place of business in Texas. The insurance company failed to appear and defend. After a judgment had been rendered in favor of the beneficiary and against the insurance company, the judgment was sued on in Texas where the Court refused to

give full faith and credit to the California judgment. This Court granted certiorari, held that the service of process on the insurance company was sufficient for purposes of due process since the suit was based on a contract which had substantial connection with California and reversed the Texas Court. This Court said:

“Since *Pennoyer v. Neff*, 95 U. S. 714, this Court has held that the Due Process Clause of the Fourteenth Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their boundaries. But just where this line of limitation falls has been the subject of prolific controversy, particularly with respect to foreign corporations. In a continuing process of evolution this Court accepted and then abandoned ‘consent,’ ‘doing business,’ and ‘presence’ as the standard for measuring the extent of state judicial power over such corporations. See Henderson, *The Position of Foreign Corporations in American Constitutional Law*, c. V. More recently in *International Shoe Co. v. Washington*, 326 U. S. 310, the Court decided that ‘due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice.”’ *Id.*, at 316.

“Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With

this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity."

There is no essential difference between the *McGee v. International Life Insurance Company* case and the present case. The present case represents business conducted by mail across state lines. The trust companies of Delaware for profit sought the establishment of trust accounts in Delaware by non-residents. The selling point was a tax advantage. Here, Mrs. Donner, a resident of Pennsylvania, had to pay a personal property tax in Pennsylvania. If she had established an agency account in Delaware, with title to the investments in her, she still would have had to pay the tax. However, if she established a trust fund in Delaware, with title in a trust company there, no tax would have been payable. Hence, the agreement was called a trust agreement, although she retained all the advantages of actual ownership by reserving powers over almost all acts of the trustee. The trust company knew that no beneficiary was a resident of Delaware. All business was carried on by mail across state lines. The trust company knew that when the settlor died the power of appointment under her will would most likely come into play; it knew with almost a certainty that the will would be construed by another state. Because of the large size of the fund, the non-residence of the beneficiaries and the questions likely to arise, the trust company must have foreseen that it would be a party to litigation to determine ownership of the fund.

The first litigation arose in Florida, where most of the beneficiaries resided. Florida was the natural place for it to arise. In addition to the presence of the beneficiaries there, the will was there and the inheritance tax question



was centered there. It is admitted that the two trust companies from Delaware had notice of the suit and had an opportunity to appear and litigate. They had more than minimum contacts with Florida in connection with the trust business in which they were engaged. The maintenance of the Florida suit did not offend "traditional notions of fair play and substantial justice". They should have appeared and defended. The Florida Court had jurisdiction of the trust companies, and that state's judgment should be given full faith and credit by the Delaware Court.

### CONCLUSION.

The action of the Delaware Supreme Court should be reversed.

Respectfully submitted,

ROBERT B. WALLS, JR.,

500 Industrial Trust Building,  
Wilmington, Delaware,

*Guardian ad Litem for Dorothy  
B. R. Stewart and William  
Donner Denckla.*